

ORIGINAL

MITCHELL ZIMMERMAN (CSB No. 88456)  
KAREN P. ANDERSON (CSB No. 193618)  
TU T. TSAO (CSB No. 209445)  
FENWICK & WEST LLP  
801 California Street  
Mountain View, CA 94041  
Telephone: (650) 988-8500  
Facsimile: (650) 938-5200

Attorneys for MICRO FOCUS INTERNATIONAL LIMITED

04 MBD 10145

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

IN RE: SUBPOENA TO  
ANGELFIRE.COM C/O LYCOS, INC.,

Case No. Miscellaneous

Pursuant to 17 U.S.C. § 512(h) (the  
Digital Millennium Copyright Act)

**REQUEST FOR ISSUANCE OF  
SUBPOENA SIGNED BY CLERK OF  
COURT PURSUANT TO 17 U.S.C.  
§ 512(h)**

Pursuant to 17 U.S.C. § 512(h), Micro Focus International Limited ("Micro Focus") hereby applies to the Clerk of the Court and requests that the Clerk of the Court issue the Proposed Subpoena to Angelfire.com c/o Lycos, Inc. submitted herewith. This application is based on the accompanying Declaration of Tu T. Tsao, to which is attached the Proposed Subpoena (Attachment A) and Micro Focus' Notification of Claimed Infringement Pursuant To 17 U.S.C. § 512 (c)(3)(A) (Attachment B).

In contrast to a typical subpoena issued under Federal Rule of Civil Procedure 45, which may be signed and issued by an attorney for a party in a lawsuit, 17 U.S.C. § 512(h) provides a mechanism by which any copyright owner or person authorized to act on the owner's behalf can have a subpoena to an online service provider issued by the clerk of any United States district court to obtain the identity of an alleged copyright infringer. **Section 512(h) expressly requires the clerk of any United States district court to *sign* and *issue* a properly prepared subpoena.**

In pertinent part, 17 U.S.C. § 512(h) provides as follows:

(1) Request. – A copyright owner or a person authorized to act on the owner's behalf may request the clerk of any United States district court to issue a subpoena to a service provider for identification of an alleged infringer in accordance with this subsection.

(2) Contents of request – The request may be made by filing with the clerk –

(A) a copy of a notification described in subsection (c)(3)(A);

(B) a proposed subpoena; and

(C) a sworn declaration to the effect that the purpose for which the subpoena is sought is to obtain the identity of an alleged infringer and that such information will only be used for the purpose of protecting rights under this title.

(3) Contents of subpoena. – The subpoena shall authorize and order the service provider receiving the notification and the subpoena to expeditiously disclose to the copyright owner or person authorized by the copyright owner information sufficient to identify the alleged infringer of the material described in the notification to the extent such information is available to the service provider.

(4) Basis for granting subpoena. – If the notification filed satisfies the provisions of subsection (c)(3)(A), the proposed subpoena is in proper form, and the accompanying declaration is properly executed, **the clerk shall expeditiously issue and sign the proposed subpoena and return it to the requester for delivery to the service provider.**

(emphasis added).

Pursuant to 17 U.S.C. § 512, Micro Focus respectfully requests that the Clerk of the United States District Court for the District of Massachusetts issue the Proposed Subpoena, attached as Attachment A to the Declaration of Tu T. Tsao in Support of Issuance of Subpoena to Lycos, Inc.

Respectfully submitted,

Dated: May 13, 2004

FENWICK & WEST LLP

By:   
Tu T. Tsao

Attorneys for  
MICRO FOCUS INTERNATIONAL LIMITED

22953/00080/DOCS/1434347.1